

Office of Chief Counsel
Internal Revenue IRS
Memorandum

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date: January 30, 2008

to: James Leith
DC Local Taxpayer Advocate

from: Susan L. Hartford
Technical Advisor to the Special Counsel
(National Taxpayer Advocate)

subject: Amendment of a Timely Claim for Refund or a New Claim Barred by IRC § 6511

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Amount \$A =

Amount \$B =

Amount \$C =

Amount \$D =

Amount \$E =

Amount \$F =

Amount \$G =

Amount \$H =

ISSUE

Whether Taxpayer's Form 1040X received by the IRS on Date 3 to claim a refund was an amendment to her timely filed Form 1040 for tax year 1999, or whether the refund claimed on that Form 1040X was barred by the statute of limitations.

CONCLUSION

Taxpayer's Form 1040X received by the IRS on Date 3 was a timely amendment, rather than a new claim barred by the statute of limitations.

FACTS

Taxpayer filed a Form 1040 for tax year 1999 in April of 2000.¹ On Form 1040, she claimed a refund in the amount of Amount \$A. That refund was computed based on the following: exemptions totaling \$11,000 for herself and three dependents (a son and two grandchildren); a standard deduction of \$6,350, based on filing status of head of household; and Earned Income Credit in the amount of Amount \$B, based on her son and one grandchild as qualifying children.

On Date 2, the IRS sent Taxpayer an examination report, proposing to change her 1999 return by disallowing the exemptions for the three dependents and changing her filing status from head of household to single. The IRS also proposed to disallow the entire Earned Income Credit, believing that Taxpayer had no qualifying children.

Consequently, the IRS proposed to issue Taxpayer a refund of only Amount \$C. After Taxpayer failed to respond to the notice of proposed changes to her 1999 tax return, the IRS issued Taxpayer a refund check in the amount of Amount \$D (the Amount \$C in tax originally proposed by the IRS as an overpayment, plus interest of Amount \$E).

On Date 3, the IRS received a Form 1040X for Taxpayer's 1999 tax year. That Form 1040X claimed a refund of Amount \$G. That refund was computed based on the

¹ The IRS's records reflect that Taxpayer's return was received on Date 1. Although the Taxpayer Advocate Service's file does not indicate that the return was timely filed, we believe it was probably timely, as April 15, 2000 was a Saturday. Thus, Taxpayer's return was not due until April 17, 2000. If Taxpayer filed on April 17, 2000, the IRS's record of receipt on Date 1 is certainly realistic. For purposes of the issue we are addressing, however, it is immaterial whether it was filed on April 15 or Date 1.

following: exemptions totaling \$5,500 for herself and one dependent (her son); a standard deduction of \$6,350, based on filing status of head of household; and Earned Income Credit in the amount of Amount \$F, based on her son as a qualifying child. After seeking advice of a representative, Taxpayer realized that she had claimed her grandchildren as dependents in error, and had incorrectly computed the Earned Income Credit. By filing Form 1040X, Taxpayer reiterated the same grounds for refund stated in her Form 1040 and was merely correcting the errors caused by inappropriately claiming dependency exemptions and the Earned Income Credit for her grandchildren. Taxpayer attached to that Form 1040X the documentation to validate her entitlement to a refund of Amount \$G.

After concluding that Taxpayer's Form 1040X was untimely, the IRS issued a notice of claim disallowance on Date 4. Taxpayer appealed, and when the Appeals Officer reviewed the case file, the Officer concluded that Taxpayer would have been entitled to a refund but for the fact that her Form 1040X was untimely.

LAW AND ANALYSIS

Section 6402(a) of the Internal Revenue Code authorizes the Secretary of the Treasury to make refunds when a taxpayer overpays taxes. The regulations on Procedure and Administration under section 6402 provide that "refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable, unless, before the expiration of such period, a claim therefor has been filed by the taxpayer." Treas. Reg. § 301.6402-2(a)(1).

Section 6511(a) provides that a claim for credit or refund of an overpayment of any tax in respect of which the taxpayer is required to file a return shall be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later, or if no return is filed by the taxpayer, within two years from the time the tax was paid. Section 6511(b)(1) provides that no credit or refund shall be allowed or made after the expiration of the period of limitations prescribed in section 6511(a), unless a claim for credit or refund is filed by the taxpayer within such period.

Two considerations are relevant in determining whether a supplemental claim for refund is considered an amendment to the original timely claim, rather than an untimely new claim. If these two requirements are satisfied, there is no specific time period within which a supplemental claim must be filed. First, the supplemental claim will not be considered an amendment to the original claim if it would require the investigation of new matters that would not have been disclosed by the investigation of the original claim. United States v. Andrews, 302 U.S. 517, 524-26 (1938); Pink v. United States, 105 F.2d 183, 187 (2d Cir. 1939) (citations omitted). Such a supplemental claim is a new claim, rather than an amendment to the existing timely claim. The policy ground for not allowing time-barred claims that vary from timely claims is that "[t]he Commissioner does not possess the time or resources to perform extensive investigations into the

precise reasons and facts supporting every taxpayer's claim for refund." Stoller v. United States, 444 F.2d 1391, 1393 (5th Cir. 1971).

Second, a supplemental claim will not generally be considered an amendment if the IRS took final action on the original claim by either rejecting or allowing the claim in whole or in part. In either case, the supplemental claim is untimely because once the IRS has taken final action on the original claim, there is no longer any claim left to amend. Mondschein v. United States, 338 F.Supp. 786 (E.D.N.Y. 1971), aff'd, 469 F.2d 1394 (2d Cir. 1973); Edwards v. Malley, 109 F.2d 640 (1st Cir. 1940), aff'g 38-1 U.S.T.C. (CCH) ¶ 9026 (D. Mass. 1937); New York Trust Co. v. United States, 87 F.2d 889 (2d Cir. 1937), aff'g 14 F.Supp. 1012 (S.D.N.Y. 1936).

There are certain narrow exceptions to the rule concerning final action by the IRS. For example, the IRS's disallowance of a claim will not constitute final action by the IRS if the IRS did not fully consider all grounds for the refund. Bemis Bro. Bag Co. v. United States, 289 U.S. 28 (1933). In Bemis Bros. Bag Co., the IRS denied a claim for refund by rejecting one of the three grounds stated in the claim, while overlooking two independent grounds for the claim. Id. at 31-32. The taxpayer then submitted an amended claim, reiterating the grounds stated in the original claim. The Supreme Court held that the amended claim could be considered even though it was filed after the statute of limitations had expired, as such claim was an amendment to the timely filed original claim.

In the instant case, Taxpayer's Form 1040 that she filed in April 2000 was a timely claim for refund for tax year 1999. In this regard, Treas. Reg. § 301.6402-3(a)(5) makes clear that an individual's original income tax return may constitute a claim for refund within the meaning of section 6402 and that "such claim shall be considered as filed on the date on which such return . . . is considered as filed." Treas. Reg. § 301.6402-3(a)(5). Regardless whether Taxpayer filed her 1999 return on April 17, 2000 (the last day for filing pursuant to IRC § 7503), or on Date 1 (the date the IRS received the return), the return was a timely claim for refund; as Taxpayer's refund claim made on the Form 1040 was considered filed at the same time as the return, the claim was considered filed within three years of the return and is timely under the three-year rule of section 6511(a). See Rev. Rul. 76-511, 1976-2 C.B. 428.

To determine whether Taxpayer's Form 1040X received by the IRS on Date 3 was an amendment to her timely filed claim on her 1999 Form 1040, rather than an untimely new claim, we must first consider whether the Form 1040X would have required the IRS to investigate new matters. On both the Form 1040 and the Form 1040X, Taxpayer claimed a refund based on an exemption for her son, a filing status of Head of Household, and Earned Income Credit computed with her son as a qualifying child. Nothing on Form 1040X was new information to the IRS; those same details were claimed on Form 1040. Thus, the IRS did not have any new information to investigate. Consequently, the Form 1040X was an amendment to her Form 1040 that timely claimed a refund.

We now turn to the question of whether the IRS took final action on Taxpayer's Form 1040 such that it could not be amended after the statute of limitations had expired. First, it is important to note that the IRS did not issue a notice of claim disallowance when initially determining that Taxpayer was only entitled to a refund of Amount \$C. The failure to issue a notice of claim disallowance for the remaining portion of the refund claimed on the Form 1040 (*i.e.*, Amount \$A-Amount \$C) could certainly be interpreted as the IRS not taking final action with respect to that Amount \$H portion. In addition, although the IRS issued Taxpayer a refund for tax year 1999 based on the Form 1040 she filed in April 2000, that refund was not based on an exemption for her son, a filing status of Head of Household, or Earned Income Credit computed with her son as a qualifying child. Thus, the IRS did not consider all of the grounds stated in Taxpayer's original claim for refund. Therefore, even though the IRS issued her a refund, there was still a claim pending that could be amended after the statute of limitations had expired. Consequently, the Form 1040X received by the IRS on Date 3 was a timely amendment to Taxpayer's Form 1040 for tax year 1999.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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Please call _____ if you have any further questions. This advice was coordinated with Branch 1 of the Office of the Associate Chief Counsel (Procedure & Administration).